

No. 06-16572

**FILED**

OCT - 3 2006

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

IN RE: GRAND JURY SUBPOENA,  
DATED JULY 19, 2006.

GREG FRANCIS ANDERSON,

*Witness -Appellant,*

v.

UNITED STATES OF AMERICA,

*Appellee.*

On Appeal from an Order of Civil Contempt of the  
U.S. District Court for the Northern District of California  
Honorable William H. Alsup

**APPELLANT'S REPLY MEMORANDUM IN SUPPORT OF  
MOTION FOR ORDER RELEASING DEFENDANT FROM CONFINEMENT**

**IMMEDIATE ACTION REQUESTED**

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GREG FRANCIS ANDERSON

The government's opposition to Mr. Anderson's motion for release is without any basis in law or fact. The government tacitly acknowledges that if, within thirty days, a court of appeals does not affirm a civil contempt order confining a recalcitrant witness, that witness must be released. 18 U.S.C. § 1826(b); *In re Grand Jury Proceedings*, 776 F.2d 1099, 1101 (2<sup>nd</sup> Cir 1985). This Court did not affirm Mr. Anderson's civil contempt order. Instead it held that the record was insufficient to support the District Court's order, and remanded the matter for further proceedings.

Faced with legal and factual circumstances that dictate only one result - Mr. Anderson's release, the government indulges in fantasy. Repeatedly, the government asserts that this Court "affirmed" the District Court's contempt order, but merely asked for "clarification" of its factual findings. That is false. This Court did not affirm the District Court. Instead, it held that the record was insufficient to support the order.

Then, the government takes the absurd position that, although the Code specifically provides a thirty-day deadline to dispose of recalcitrant witness appeals, the thirty-day requirement is not a requirement at all, and that Mr. Anderson should continue to sit in jail despite the statutory requirements because he has been otherwise "guaranteed a speedy resolution of his appeal on or shortly

after October 5, 2006." Thirty days means thirty days. It does not mean "shortly after" thirty-seven days.

Section 1826(b) means what it says. Mr. Anderson's continued confinement violates the law, and this Court must order his release.

Dated: October 3, 2006

Respectfully submitted,

GERAGOS & GERAGOS  
A Professional Corporation

By: 

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GREG FRANCIS ANDERSON